

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
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OFFICE OF THE ATTORNEY GENERAL
CIVIL DIVISION

MEMORANDUM

To: Jeanne Rayphand, AAG
From: James Livingstone, Civil Division Chief *[Signature]*
Cc: Lillian Pangelinan, Division of Banking; Marie Martinez, AAG; Ken Barden, AAG; Kathy Tenorio
Date: February 13, 2006
Re: *Transfer Memorandum regarding Bank of Saipan litigation matters*

There are currently six Bank of Saipan matters pending in the local courts. Our office represents the Secretary of Commerce in five of them. The ones I am transferring to you include: three actions relating to the Receivership case and one involving the appeal of Judge Wiseman's decision. The final case is an Open Government Act case brought by the Bank. Kristin St. Peter is handling this case and it should be resolved shortly. The Secretary of Commerce is the named party in all the cases. Lillian Pangelinan, who works in the Division of Banking, is the main contact person for all Bank of Saipan work. Her number is 664-3008.

I. Randy Fennell Litigation (*Bank of Saipan v. Fennell* (Superior Court) (J. Lizama))

The Bank has sued Randy Fennell and his former lawyers (Schwabe law firm and Dick Pierce) for alleged breaches of their fiduciary duties and fraud for actions that the Bank alleges they took during the time Mr. Fennell served as receiver. MPLA has intervened on the side of the Bank.

[REDACTED]

All of the defendants have asked for defense and indemnification under PELDIA. It has been denied with respect to all the defendants except Randy Fennell. Presiding Judge Naraja granted Mr. Fennell's request. Rex Kosack and his firm represent Mr. Fennell, but the PJ refused to pay for them. Instead, AAG David Lochabay's services were offered. I do not believe that David has participated in Mr. Fennell's defense in any way. This PELDIA determination is under review right now by Marie, as I understand Mr. Fennell has asked for Mr. Kosack's services to be paid by the Commonwealth and the Bank has asked for the determination to be revoked.

An ethical wall was discussed for David. Pam Brown never issued a memo that I prepared on the subject. For the cases, David reported to Clyde Lemons and I reported to Pam.